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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL DAVID BAKKE,

Petitioner - Appellant,

v.

ANTHONY P. KANE, Warden,

Respondent - Appellee.

No. 06-55576

DC No. CV 05-00294 TJH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, District Judge, Presiding

Argued and Submitted October 19, 2007
Pasadena, California

Before: KOZINSKI, TASHIMA, and McKEOWN, Circuit Judges.

Michael David Bakke (“Bakke”) appeals the district court’s dismissal of his petition for a writ of habeas corpus as barred by the one-year statute of limitations of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). See 28

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

U.S.C. § 2244(d)(1). On appeal, Bakke contends that he is entitled to equitable tolling due to mental incompetency, or, at the least, an evidentiary hearing to establish his mental incompetency. Although mental incompetency is an “extraordinary circumstance” that may justify equitable tolling of the AEDPA’s statute of limitations, see Laws v. Lamarque, 351 F.3d 919, 922-23 (9th Cir. 2003), this case is squarely governed by Gaston v. Palmer, 417 F.3d 1030, 1034-35 (9th Cir. 2005), amended by 447 F.3d 1165 (9th Cir. 2006). Therefore, the judgment of the district court is

AFFIRMED.